

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

In the Matter of the Estate of Marion S. : Case No. 3:19-cv-65
Hutson Deceased Kyle E. Hutson, Executor, :
Plaintiff, : Judge Thomas M. Rose
v. :
Upland Village, :
Defendant. :

ENTRY AND ORDER DENYING MOTION TO REMAND (DOC. 6)

This case is before the Court on Plaintiff's Motion to Remand to State Court ("Motion to Remand") (Doc. 6). Defendant Upland Village filed a Memorandum in Opposition (Doc. 7) to the Motion to Remand. Plaintiff did not file a reply and the time for it to do so has expired. Plaintiff argues that this case should be remanded to state court because it was not removed within 30 days of when Defendant ascertained that the amount in controversy exceeded \$75,000, as required under 28 U.S.C. § 1446(b). Defendant has come forward with evidence, however, showing that it did not possess the information necessary to show, by a preponderance of the evidence, that this Court has diversity jurisdiction until the filing of the Amended Complaint on February 19, 2019. *Gafford v. Gen. Elec. Co.*, 997 F.2d 150, 158 (6th Cir. 1993) (upon removal defendant must show amount-in-controversy meets the jurisdictional threshold by a preponderance of the evidence), overruled on other grounds by *Hertz Corp. v. Friend*, 559 U.S. 77 (2010). As Defendant removed this case within 30 days of February 19, 2019, the Court **DENIES** the Motion to Remand (Doc. 6).

DONE and **ORDERED** in Dayton, Ohio, this Thursday, April 4, 2019.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE